

Protected Resources and Alaska Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations with full documentation of the methods, results, and interpretation of all monitoring tasks for launches during all expired Letters of Authorization, plus preliminary information for launches during the first 6 months of the final Letter of Authorization.

(5) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of these regulations.

(6) Both the interim and draft comprehensive reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

§ 216.235 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization, but a Letter of Authorization may not be valid beyond the effective period of the regulations.

(b) A Letter of Authorization with a period of validity less than the effective period of the regulations in this subpart may be renewed subject to renewal conditions in § 216.236.

(c) A Letter of Authorization will set forth:

- (1) Species of marine mammals authorized to be taken;
- (2) Permissible methods of incidental taking;
- (3) Specified geographical region;
- (4) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and
- (5) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the total taking by the activity as a whole will have no more than a negligible impact on the affected species or stocks of marine mammal(s).

(e) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.236 Renewal of a Letter of Authorization.

(a) A Letter of Authorization for the activity identified in § 216.230(a) will be renewed upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under § 216.235 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of and acceptance by the National Marine Fisheries Service of the monitoring reports required under § 216.234;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under §§ 216.232 and 216.234 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity will be small and that the total taking by the activity will have no more than a negligible impact on the affected species or stocks of marine mammal(s), and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.237 Modifications to a Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to the provisions of this subpart shall be made by the National Marine Fisheries Service until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under § 216.236 without modification is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.230(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be

published in the **Federal Register** within 30 days subsequent to the action. [FR Doc. 04-24234 Filed 10-28-04; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 040920271-4271-01; I.D. 102004A]

RIN 0648-AS05

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; collection-of-information requirements; request for comments.

SUMMARY: NMFS proposes regulations to implement resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (IDCP). These regulations would prohibit activities that undermine the effective implementation and enforcement of the Marine Mammal Protection Act (MMPA), Dolphin Protection Consumer Information Act (DPCIA), and International Dolphin Conservation Program Act (IDCPA). This proposed rule would enlarge the class of vessels required to pay observer fees. The procedure to categorize tuna purse seine vessels as "active" in the Eastern Tropical Pacific Ocean (ETP) and the deadline for submitting vessel permit applications would change. Procedures are proposed for managing the capacity of the U.S. tuna purse seine fleet operating in the ETP through maintenance of a Vessel Register, the definitive list of vessels authorized to purse seine for tuna in the ETP. This proposed rule is intended to contribute to the long-term conservation of dolphin and tuna stocks and to ensure that the domestic tuna tracking and verification program remains consistent with international standards.

DATES: Comments on the proposed regulations must be received by November 29, 2004.

ADDRESSES: Send comments on the rule and the Initial Regulatory Flexibility Analysis to Jeremy Rusin, NMFS,

Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. This address may also be used to submit observer fee payments, permit applications and other documentation to the Administrator, Southwest Region, with the exception of Fisheries Certificates of Origin (see below). Comments may be sent via facsimile (fax) to (562) 980-4027 or via E-mail. Include in the subject line of the E-mail the following document identifier: RIN 0648-AS05. The mailbox address for providing E-mail comments is 0648-AS05@noaa.gov. Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

Fisheries Certificates of Origin submitted via mail should be sent to Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832-2469.

FOR FURTHER INFORMATION CONTACT: Jeremy Rusin, NMFS, Southwest Region, Protected Resources Division, at (562) 980-4020.

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of the IATTC, which was established in 1949 under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention). The IATTC provides an international forum to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the fisheries and the status of tuna stocks to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. More recently, the IATTC has moved into other fishery management issues, such as managing the cumulative capacity of vessels fishing in the Convention Area, bycatch of non-target and protected species, and imposing time-area closures to conserve tuna stocks.

In support of fleet capacity control, the United States agreed to an IATTC resolution that limited total ETP purse seine fleet capacity. Currently, the United States is committed to limiting the capacity of its domestic tuna purse seine fleet operating in the ETP to 8,969 metric tons (mt) carrying capacity. The

U.S. limit was originally based on the cumulative capacity of U.S. vessels actively fishing in the ETP in the years leading up to 1999. In addition, U.S. purse seine vessels based in the western Pacific Ocean (WPO) were allowed to make 32 trips into the ETP without counting against the 8,969 mt limit. Recent resolutions adopted under the IATTC have addressed limits on fleet capacity. The United States and other Parties to the IATTC Convention and Agreement on the IDCP are responsible for domestically implementing resolutions adopted each year. Under the U.S. Tuna Conventions Act (16 U.S.C. 951 *et seq.*), the Secretary of Commerce is authorized to promulgate regulations implementing the recommendations of the IATTC. Implementation of recent capacity resolutions is one objective of this proposed rule.

The IDCPA was signed into law August 15, 1997, and became effective March 3, 1999. The IDCPA amends the MMPA, DPCIA (16 U.S.C. 1385), and Tuna Conventions Act. The IDCPA, together with previous declarations, became the blueprint for the Agreement on the IDCP. In May 1998, eight nations, including the United States, signed a binding, international agreement to implement the IDCP. The Agreement on the IDCP became effective on February 15, 1999, after four nations (United States, Panama, Ecuador, and Mexico) deposited their instruments of ratification, acceptance, or adherence with the depository for the Agreement. The IDCPA (16 U.S.C. 1413) mandates the Secretary of Commerce to issue and revise regulations, as appropriate, to implement the IDCP.

This proposed rule is intended to revise current regulations to ensure consistency between operation of the U.S. tuna purse seine fleet in the ETP and resolutions adopted by the IATTC and by the Parties to the Agreement on the IDCP. This proposed rule also introduces procedural modifications needed in the domestic tuna tracking and verification program, especially regarding the maintenance and submission of tracking and verification records. In addition, these regulations would prohibit labeling tuna with a mark that refers to dolphins or other marine mammals if the label does not comply with the requirements of 16 U.S.C. 1385(d) and prohibit interference with enforcement and inspection activities that undermine the effectiveness of the MMPA.

Definitions

The definition for “Fisheries Certificate of Origin” would be revised

in § 216.3 to include the acronym “FCO”, as well as NOAA Form 370. In § 216.3, a definition for “South Pacific Tuna Treaty” would be added to specify that the term refers to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty).

In § 300.21, a definition would be added for “Vessel Register” in order to formally name the list of vessels authorized to purse seine for tuna in the ETP, which is comprised of both U.S. and international vessels. A second definition would be added in Section 300.21 for “South Pacific Tuna Treaty” to specify that the term refers to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

Interference with Investigations and Authorized Activities

These regulations propose to add a new § 216.17 to prohibit activities that undermine the effective implementation and enforcement of the MMPA, DPCIA, and IDCPA. Currently, individuals who refuse to permit boardings by enforcement agents, interfere with inspections or stranding response, or intentionally submit false information may not be subject to prosecution under the MMPA, as such activities are not specifically prohibited. Such activities constrain law enforcement actions needed to ensure compliance with the statute. Lastly, this action would ensure that there are regulations protecting law enforcement officials while conducting investigations in the field.

Vessel Register

The IATTC established a international Vessel Register on June 28, 2002. In § 300.22(b), NMFS proposes to maintain a domestic Vessel Register in accordance with recommendations of the IATTC. In addition, procedures would be established for vessels to be categorized as active or inactive on the Vessel Register for a given calendar year. Vessels would be eligible for inclusion on the Vessel Register if they were determined to have a history of fishing in the ETP prior to the establishment of the IATTC Vessel Register on June 28, 2002. Vessels that were not originally eligible for inclusion on the Vessel Register could be added only to replace another vessel of equal or greater capacity that has been removed from the Vessel Register.

As of September 2004, the following U.S. purse seine vessels, with carrying capacities in parentheses, are eligible for inclusion on the Vessel Register

maintained by the IATTC: *Andrea C* (1,089 mt); *Anna Maria II* (82 mt); *Annie D* (100 mt); *Anthony G* (35 mt); *Antoinette W* (25 mt); *Atlantis* (1,089 mt); *Barbara H.* (91 mt); *Bold Adventuress* (1,361 mt); *Calogera A* (62 mt); *Cape Elizabeth* (1,542 mt); *Cape Finisterre* (1,361 mt); *Carol Linda* (1,587 mt); *Cassie* (62 mt); *Connie Jean* (517 mt); *Daniela* (1,217 mt); *Diana* (1,089 mt); *Donna B* (145 mt); *Eileen* (42 mt); *Ferrigno Boy* (70 mt); *Fiore D'Mare* (85 mt); *G Nazzareno* (75 mt); *Gallant* (91 mt); *Gloria Marie* (23 mt); *Jeanette* (1,542 mt); *Jeannine* (1,089 mt); *Jenny Lynne* (59 mt); *Kathy Jeanne* (73 mt); *King Philip* (91 mt); *Koorale* (998 mt); *Lady Elizabeth* (288 mt); *Lady Renee* (36 mt); *Linda C.* (11 mt); *Margaret F* (54 mt); *Maria* (89 mt); *Maria T* (45 mt); *Mary Louise* (54 mt); *Mauritania* (340 mt); *Midnight Hour* (45 mt); *Nancy B II* (68 mt); *New Horizon* (33 mt); *Odette Therese II* (1,089 mt); *Pacific Princess* (1,089 mt); *Pioneer* (64 mt); *Proud Heritage* (998 mt); *Retriever* (45 mt); *Romani Sons* (91 mt); *Saint Joseph* (79 mt); *San Antonio* (86 mt); *San Pedro Pride* (104 mt); *Santa Maria* (77 mt); *Sea Encounter* (1,814 mt); *Sea Queen* (91 mt); *Sheelagh B* (82 mt); *St George II* (91 mt); *Tradition* (1,089 mt); *Trionfo* (68 mt); and *Western Pacific* (1,678 mt).

In order for vessels in excess of 400 short tons (st), (362.8 mt) carrying capacity to purse seine for tuna in the ETP, they would be required to be categorized as active on the Vessel Register, have obtained a vessel permit, and have paid the permit application fee and the observer placement fee associated with the active status.

Owners who request to have purse seine vessels in excess of 400 st (362.8 mt) listed as inactive on the Vessel Register would be required to pay the observer placement fee associated with inactive status. However, only purse seine vessels in excess of 400 st (362.8 mt) listed as active on the Vessel Register would be allowed to fish in the ETP; large purse seine vessels listed as inactive would be prohibited from fishing.

Purse seine vessels licensed under the South Pacific Tuna Treaty would be allowed to make a single trip in the ETP per year, not to exceed 90 days in duration. They would not be required to be listed on the Vessel Register; however, they would be required to obtain a vessel permit, pay the permit application fee and the observer placement fee associated with active status, and carry an approved IDCP or ETP-trained Forum Fisheries Agency observer prior to entering the ETP to fish. No more than 32 such trips would be allowed per year.

Purse seine vessels of less than 400 st (362.8 mt) carrying capacity that do not target tuna on a full-time basis (in other words, 50 percent or less of annual landings by the vessel are tuna caught in the ETP) would not be required to be categorized as active, or even be listed on the Vessel Register, in order to purse seine for tuna in the ETP when tuna are seasonally available.

Purse seine vessels of less than 400 st (362.8 mt) carrying capacity that target tuna on a full-time basis (in other words, more than 50 percent of annual landings by the vessel are tuna caught in the ETP) would be required to be categorized as active on the Vessel Register. In order to be categorized as active on the Vessel Register, these small purse seine vessels would be required to submit payment of observer placement fees associated with active status to the Administrator, Southwest Region. Owners may request to have purse seine vessels of less than 400 st (362.8 mt) carrying capacity listed as inactive on the Vessel Register by submitting payment of the observer placement fee associated with inactive status.

New § 300.22(b)(4)(i) would provide that when the owner of a vessel in excess of 400 st (362.8 mt) carrying capacity submits a vessel permit application, permit application fee, and observer placement fee, the Administrator, Southwest Region, would interpret the submissions as the owner's request for the subject vessel to be categorized as active under the Vessel Register in a given calendar year. The owner of a vessel of 400 st (362.8 mt) carrying capacity or less would be required to submit only payment of the observer placement fee associated with active status in order to request the vessel be listed on the Vessel Register as active.

For 2005 only, requests to be categorized as active that are received by the Administrator, Southwest Region, would be prioritized on a first-come, first-served basis. Requests to be active for 2006 and subsequent years that are received by the Administrator, Southwest Region, between August 1 and September 15 of the previous year, for vessels requesting DMLs, or between August 1 and November 30 of the previous year, for vessels not requesting a DMLs, would be prioritized according to the following hierarchy: (1) requests for vessels that were categorized as active in the previous year except for vessels that were determined by the Administrator, Southwest Region, to have made frivolous requests for the previous year; (2) requests for vessels that were categorized as inactive in the

previous year; (3) requests for vessels not described in (1) or (2) will be prioritized on a first-come, first-served basis; and (4) requests for vessels that were determined to have made a frivolous request for active status for the previous year. Vessels in excess of 400 st (362.8 mt) carrying capacity would not be categorized as active on the Vessel Register unless the captain of the vessel possessed a valid operator permit.

Under new § 300.22(b)(5), vessels could be removed from the Vessel Register by the Administrator, Southwest Region: (1) if they have sunk, (2) at the written request of the owner or managing owner, (3) if they have not paid the required observer placement fee, (4) if the vessel owner or managing owner does not submit, within the allotted time, a vessel permit application and associated processing fee, (5) if the United States Coast Guard notifies NMFS that the U.S. documentation for the vessel has been deleted, or (6) for serious violations, for failure to pay a penalty, or for default on a penalty payment agreement.

In new § 300.22(b)(6), vessels removed from the Vessel Register for a given year or years could be added back to the Vessel Register and categorized as inactive at any time, provided they pay the vessel assessment associated with inactive status. Vessels removed from active status on the Vessel Register for one of the reasons described in the previous paragraph may be replaced with another vessel by the Administrator, Southwest Region, at any point during the year. Owners or managing owners of vessels eligible for inclusion on the Vessel Register would be notified by the Administrator, Southwest Region, when an opportunity to replace a removed vessel arises.

Vessels categorized as inactive at the time that a vessel is removed from active status, and active capacity becomes available, would be given first priority to become active for the remainder of the year. Second priority would be given to vessels not included on, but eligible for inclusion, on the Vessel Register. In order to replace a vessel removed from active status on the Vessel Register, the owner of a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity would be required to submit to the Administrator, Southwest Region, a vessel permit application, as well as payment of the permit application processing fee and observer placement fee consistent with active status and verification that the captain of the vessel possessed a valid operator permit.

In order to replace a vessel removed from active status on the Vessel Register, the owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less would be required to submit to the Administrator, Southwest Region, only payment of the observer placement fee consistent with active status.

The regulations would require that the owner of a purse seine vessel listed as inactive on the Vessel Register, who requests to have the vessel's status changed to active, pay an observer placement fee equal to the difference between the fee for active status and the fee for inactive status that was already paid. The observer placement fee for an owner of a replacement vessel not already listed as inactive on the Vessel Register would be the full observer placement fee associated with active status.

Vessel Permit Application and Payment of Observer Placement Fee

Section 216.24(b)(4) would require vessel permit applications to be faxed and establish deadlines for submission of vessel permit applications and application processing fees. No vessel permit application or application processing fee may be submitted prior to August 1 of the year prior to year for which permit would be valid. Vessel owners or managing owners requesting a dolphin mortality limit (DML) and that a vessel be categorized as active on the Vessel Register for the following year, would be required to submit the vessel permit application, observer placement fee, and application processing fee no later than September 15 of the year prior to year for which the DML is requested.

Vessel owners or managing owners not requesting a DML for a vessel, but requesting a vessel greater than 400 st (362.8 mt) be categorized as active on the Vessel Register for the following year, would be required to submit the vessel permit application, observer placement fee, and application processing fee no later than November 30 of the year prior to the year for which inclusion on the Vessel Register is requested.

Owners or managing owners of vessels not on the Vessel Register and licensed under the South Pacific Tuna Treaty would be required to submit vessel permit applications, observer placement fees, and application processing fees before the vessel is assigned an observer and enters the ETP to fish, allowing 15 days for NMFS to process the application.

Owners or managing owners of vessels equal to or less than 400 st

(362.8 mt) would not be required to submit a vessel permit application or application processing fee; vessel permits are not required for vessels of this size regardless of whether or not they are listed on the Vessel Register.

Any owner that requests to have a purse seine vessel of less than 400 st (362.8 mt) carrying capacity listed as active on the Vessel Register would be required to submit payment of the observer placement fee associated with active status no later than November 30 of the year prior to the year for which inclusion on the Vessel Register is requested. Owners of small purse seine vessels for which at least 50 percent of annual catch is comprised of tuna caught in the ETP would be required to request these vessels be listed as active on the Vessel Register by submitting payment of observer placement fees associated with active status no later than November 30 of the year prior to the year for which inclusion on the Vessel Register is requested. Owners that request to have these small vessels listed as inactive on the Vessel Register would be required to submit payment of observer placement fees associated with inactive status no later than November 30 of the year prior to the year for which inclusion on the Vessel Register is requested.

Owners requesting to replace a vessel removed from active status on the Vessel Register would be required to submit to the Administrator, Southwest Region, a vessel permit application, payment of the permit application processing fee, and payment of the observer placement fee consistent with active status before the vessel would be listed as active. In addition, these owners would be required to verify that the captain of the vessel possessed a valid operator permit.

Importation, Purchase, Shipment, Sale, and Transport

In § 216.24, a new paragraph (f)(3)(ii) would be added requiring that Fisheries Certificates of Origin (FCOs) and associated certifications be submitted by the importer of record within 30 days of the shipment's entry into the commerce of the United States. The proposed regulations would allow certifications to be submitted electronically to the Tuna Tracking and Verification Program using a secure file transfer protocol (FTP). Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program. Certifications submitted by mail either on compact disc or as hard copies to the Tuna Tracking and Verification Program (see

ADDRESSES) would also be acceptable.

All importers of record submitting electronic certifications, whether via FTP or on compact disc, would be required to make submissions in either Adobe Portable Document Format (PDF) or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file. Paragraphs previously designated (f)(2)(ii) and (iii) would be redesignated as (f)(2)(iii) and (iv), respectively.

In § 216.24(f)(4) two modifications would be made. In paragraph (f)(4)(xi), the name of the vessel would be required on the FCO regardless of the gear type used. In paragraph (f)(4)(xiv), NMFS would require importers, exporters, or processors who take custody of tuna shipments to sign and date FCOs. Current regulations limit this requirement to tuna shipments harvested by purse seine vessels in excess of 400 st. This modification is necessary because processors who import tuna must be able to verify dolphin-safe status through use of the FCO for all tuna imports regardless of gear or vessel size.

Market Prohibitions

NMFS would add a market prohibition to § 216.24(f)(12)(ii) to complement the dolphin-safe labeling requirements under the DPCIA, as codified in regulations at 50 CFR 216.91 *et seq.* This new prohibition would make commerce in tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals illegal if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d). The Dolphin Protection Consumer Information Act authorizes the Secretary to regulate entities in the stream of commerce that are responsible for trafficking in tuna product that bears labels suggesting the tuna was harvested in a "dolphin-safe" manner. As a result and based on NMFS' experience, NMFS has determined that giving NMFS the ability to enforce the labeling standards at the wholesale, distribution, and retail levels will further compliance with the DPCIA. During the course of recent investigations into illegally imported tuna products, NMFS determined that there is both a ready supply of a certain brand of tuna products from Mexico entering the U.S. market that carries a label/mark that implies the tuna is dolphin-safe and a demand among consumers for this product. While there is no indication that the labeled product is not dolphin-safe, it appears that the product entered the U.S. market without being accompanied by the required paperwork. Further, at the time such

products were discovered by law enforcement officials, the party possessing the product (usually a retailer) was not the party that placed the dolphin-related label on the product.

This proposed new prohibition would improve the ability of NMFS Enforcement to pursue enforcement actions against all parties in the stream of commerce that handle or sell labeled tuna product. Putting such enforcement pressure on all businesses that distribute or sell labeled products is likely to raise their awareness of the dolphin-safe labeling standards. NMFS anticipates that this will, in turn, reduce the illegal trafficking of such products.

Changes to Verification Requirements

Section 216.93(c)(v) would be revised to prohibit distribution of confidential Tuna Tracking Forms (TTFs) by replacing the phrase "shall not" with "may not". Current regulations were intended to prohibit distribution of these confidential documents; however, this intention was not apparent in the way current regulations were constructed.

Section 216.93(e) would be revised in this proposed rule to specify that copies of FCOs and required certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States, consistent with the addition of a the proposed new paragraph (f) (3) (ii) in § 216.24(f)(3).

NMFS would revise § 216.93(f) to require maintenance of records on all tuna imported into the United States, not just tuna harvested in the ETP that is imported. This change would be made because of the need to track all the tuna coming into the United States in order to track and verify tuna harvested in the ETP.

Under these proposed regulations, certain entities (any exporter, transshipper, importer, processor or wholesaler/distributor of tuna or tuna products) would be required to submit FCOs within 30 days of every shipment, as opposed to within 30 days of a request by the Southwest Regional Administrator. These revisions would be made in § 216.93(f)(2).

NMFS would add a requirement that wholesalers and distributors maintain records related to the shipment of tuna, including the FCO, required certifications, invoices, and other import documents under the authority of paragraph (f) of the DPCIA (16 U.S.C. 1385(f)). The revised § 216.93(f) would require any "wholesaler/distributor" to comply with the record maintenance,

submission, and audit/spot-check obligations of the Tuna Tracking and Verification Program. In addition to maintaining records, wholesalers/distributors would be required to submit or provide access to all pertinent records and facilities related to caught, landed, stored and processed tuna.

For purposes of this regulation, wholesalers/distributors would be identified as entities that sell from offices or warehouses, advertise to businesses rather than to the general public, and generally have no walk-in traffic or public displays. This addition is proposed because current regulations require importers to adhere to the tracking requirements, but do not extend the requirements to parties any farther in the stream of commerce. Investigations into the alleged illegal importation of tuna products have been thwarted because NMFS discovered the products only after they had been delivered to the retailers. For example, wholesalers/distributors did not maintain any paperwork regarding the delivery or purchase of the tuna that would have allowed NMFS to investigate who had been involved in the illegal importation. Without extending the tracking requirements to wholesalers/distributors, this complication with investigations would likely continue, as there is the potential that illegal importations of tuna are ongoing. NMFS does not propose extending recordkeeping requirements to retailers, but in order to aid enforcement of these regulations, NMFS would apply the verification requirements of this section to wholesalers/distributors.

Public Comments Solicited

NMFS is soliciting public comments on this proposed rule. Written comments may be submitted to Jeremy Rusin (see **ADDRESSES** and **DATES**).

Classification

Executive Order 12866

This proposed rule has been determined to be not "significant" under Executive Order 12866. NMFS prepared a Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), included as Appendix A to the Environmental Assessment (EA) prepared on the proposed regulations. The EA, including the RIR/IRFA, is available at the following website: <http://swr.nmfs.noaa.gov>.

Regulatory Flexibility Act

Pursuant to procedures established to implement the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared an RIR/IRFA, included as

Appendix A to the EA prepared on the proposed regulations. The IRFA indicates that the proposed regulations would have a minimal impact on the U.S. purse seine fishing fleets and associated businesses.

NMFS analyzed three alternatives in the IRFA for this proposed rule. The first alternative that NMFS analyzed was the "no action" alternative and this alternative would not implement recommendations of the IATTC member nations or resolutions adopted by the Parties to the Agreement on the IDCP. The second alternative NMFS analyzed was the "preferred alternative," which would: (1) establish a register of U.S. vessels with a history of fishing in the ETP prior to June 28, 2002, and require that only vessels on that list would be authorized to purse seine for tuna in the ETP; (2) limit the aggregate capacity of U.S. purse seine vessels that may fish full time for tuna in the ETP to 8,969 mt carrying capacity per year; (3) revise the requirements for maintaining and submitting tuna tracking and verification records; (4) ensure that owners of U.S. vessels on the register pay annual assessments; (5) prohibit commerce in tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and (6) prohibit interference with enforcement and inspection activities, submission of false information, and other activities that would undermine the effectiveness of the MMPA, IDCPA, and DPCIA. The third alternative NMFS analyzed was the "variations of the preferred alternative" alternative and this alternative would retain the clearly required elements of the preferred alternative, but it would also include other measures not specifically required by internationally adopted resolutions. Generally, the objectives of resolutions adopted by the IATTC member nations and the Parties to the Agreement on the IDCP are clear; however, some provisions allow for agency discretion, either in implementing or interpreting the intent of the resolution. These discretionary areas provided the basis for this third alternative.

NMFS rejected the "no action" alternative because it would not restrict annual participation by U.S. flag purse seine vessels in the fishery and would not implement needed prohibitions or refine tuna tracking procedures. Under the "no action" alternative, the United States would not be fulfilling its obligations under the IATTC and Agreement on the IDCP; adopting this alternative would provide a precedent

for other nations to ignore future international recommendations.

NMFS chose the "preferred alternative," which includes a combination of procedures to restrict domestic fleet capacity, updates to the domestic tuna tracking and verification program, prohibitions against interfering with enforcement activities, and prohibitions against using a label on tuna products that refers to dolphins or other marine mammals when the label does not comply with the requirements of the DPCIA. The "preferred alternative" is expected to have minimal impacts on the U.S. purse seine fishing fleet and associated businesses.

NMFS also considered but rejected the third alternative which included taking independent action to address tuna conservation (e.g., quota, area closures, or other variations of the preferred alternative) because these approaches fail to address the potential for fleet capacity growth. Further, the United States does not have independent sources of information that would provide a sufficiently sound approach to support a departure from recommendations of the IATTC member nations and Parties to the Agreement on the IDCP.

The IRFA indicates, with only 1–2 exceptions, that tuna landings of small purse seine vessels (i.e., vessels less than 400 st carrying capacity and classified as small business entities) do not comprise a significant percentage of the total landings of small purse seine vessels. Therefore, these vessels would be exempt from being categorized as active on the Vessel Register or paying associated annual vessel assessments in order to purse seine for tuna when they are seasonally available. The 1–2 small vessels that have historically targeted tuna on a full-time basis, as well as large tuna purse seine vessels (in excess of 400 st carrying capacity), would be required to be listed as active on the Vessel Register and pay associated annual vessel assessments in order to fish for tuna in future years.

The annual capacity limit of 8,969 mt that would be imposed on the U.S. tuna purse seine fleet as a result of this action is expected to accommodate the majority of interested vessels based on vessel participation in the fishery in recent years, including the 1–2 small purse seine vessels that target tuna on a full-time basis. In 2004, owners expressed an interest to have an additional 2 vessels in excess of 400 st carrying capacity categorized as active, which would have totaled approximately 11,500 mt in fleet capacity. Therefore, implementing the fleet capacity limit through this rule

would result in 1 or 2 eligible U.S. purse seine vessels being excluded from participating in the ETP tuna fishery if the current level of interest in the fishery is maintained.

Updates to the tuna tracking and verification program; prohibitions against commerce in tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and prohibitions against activities that undermine the implementation and enforcement of the MMPA, IDCPA and DPCIA are not expected to significantly impact small business entities. While the proposed changes are expected to result in some new or increased burdens to small businesses, the experience of the Tuna Tracking and Verification Program indicates that the proposed change would ensure NMFS' continued ability to verify the dolphin-safe status of tuna.

The preferred alternative is not expected to have a significant economic impact on the U.S. tuna purse seine fleet operating in the ETP. The only small business entities which would potentially be affected by this proposed rule would be 1–2 small purse seine vessels which target tuna in the ETP on a full-time basis. These actions are not expected to compromise the ability of these small vessels to target tuna or reduce their retained catch or sales revenue. Similarly, there would be no impacts on processors, nor would total employment be affected by this action.

While this alternative would implement capacity controls for the fleet, the proposed limit, 8,969 mt, is consistent with the recent level of interest and participation in the fishery by U.S. vessels. This alternative would also exempt smaller fishing entities that do not target tuna on a full-time basis from paying annual vessel assessments. Considering their access to fishing grounds in the western Pacific Ocean, vessels in excess of 400 st carrying capacity in the U.S. tuna purse seine fleet are expected to have sufficient flexibility to target tuna where and when they are seasonally available. Foreign purse seine fleets, as well as domestic and international tuna processors, are not expected to be significantly adversely affected by implementation of this alternative, due to the global nature of tuna supply and pricing.

NMFS is requesting comments on the IRFA. The EA, including the RIR/IRFA, is available at the following website: <http://swr.nmfs.noaa.gov>. Send

comments to Jeremy Rusin, NMFS (see **ADDRESSES**).

Paperwork Reduction Act

This proposed rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which appears in § 216.93(f) of this proposed rule. Wholesalers/distributors are included in the list of entities required to produce records relative to tracking and verification of tuna to the Administrator, Southwest Region. This added collection-of-information requirement was approved by the Office of Management and Budget (OMB) on February 6, 2003, under control number 0648–0387. The public reporting burden for this collection is estimated to average 30 minutes for a wholesaler/distributor to produce records.

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The preceding public reporting burden estimates for collections of information include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jeremy Rusin, NMFS (See **ADDRESSES**), or to David Rostker, OMB, by e-mail at David-Rostker@omb.eop.gov or by fax to 202–395–7285.

Endangered Species Act

NMFS prepared a Biological Opinion for the interim final rule to implement the IDCPA in December 1999, concluding that fishing activities conducted under the interim final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. NMFS is unaware of any new information that would indicate this proposed action may affect listed species in a manner or to an extent not previously considered, nor do the proposed regulations modify the fishery in a manner that causes an effect to listed species not previously considered in the Biological Opinion. Therefore, NMFS has determined that the conclusions and incidental take

statement of the Biological Opinion remain valid and reinitiation of consultation is not required. NMFS continues to monitor annual sea turtle takes and mortalities in the U.S. tuna purse seine fishery operating in the ETP to ensure that levels are within those analyzed in the Biological Opinion and authorized in the amended Incidental Take Statement.

National Environmental Policy Act

NMFS prepared a draft Environmental Assessment (EA) on these proposed regulations. A copy of the draft EA is available at: <http://swr.nmfs.noaa.gov>.

Dated: October 20, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

List of Subjects

50 CFR Part 216

Fish, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 300

International fisheries regulations; Pacific tuna fisheries.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 216 and 300 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3 the definition for “Fisheries Certificate of Origin” is revised and a definition for “South Pacific Tuna Treaty” is added to read as follows:

§ 216.3 Definitions.

* * * * *

Fisheries Certificate of Origin or FCO, means NOAA Form 370, as described in § 216.24(f)(4).

* * * * *

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

* * * * *

3. A new § 216.17 is added to subpart B to read as follows:

§ 216.17 General prohibitions.

It is unlawful for any person to:

(a) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, investigation or

seizure in connection with enforcement of the MMPA, DPCIA, or IDCPA.

(b) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the MMPA.

(c) Resist a lawful arrest for any act prohibited under the MMPA.

(d) Make any false statement, oral or written, to an authorized officer concerning any act under the jurisdiction of the MMPA, DPCIA, IDCPA, or attempt to do any of the above.

(e) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the MMPA, DPCIA, or IDCPA.

4. Section 216.24 is amended by revising paragraphs (b)(4), (b)(6)(i), (b)(6)(iii), (f)(3), (f)(3)(ii)–(f)(3)(iv), (f)(4)(xi), (f)(4)(xiv) and (f)(12) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(b) * * *

(4) *Application for vessel permit.* The owner or managing owner of a purse seine vessel may apply for a permit from the Administrator, Southwest Region, allowing at least 15 days for processing. All vessel permit applications must be faxed to (562) 980–4027. An owner or managing owner requesting to have a vessel in excess of 400 st (362.8 mt) carrying capacity for which a DML was requested categorized as active on the Vessel Register under § 300.22(b)(4)(i) of this title must submit to the Administrator, Southwest Region, the vessel permit application, payment of the observer placement fee under paragraph (b)(6)(iii) of this section and payment of the vessel permit application processing fee no later than September 15 of the year prior to the year for which the DML was requested. The owner or managing owner of a vessel in excess of 400 st (362.8 mt) carrying capacity not requesting a DML must submit the vessel permit application, payment of the observer placement fee, and payment of the vessel permit application processing fee no later than November 30 of the year prior to the year for which the vessel permit was requested. An application must contain:

* * * * *

(6) * * *

(i) *Vessel permit application fees.* Payment of the permit application fee is required before NMFS will issue a

permit. The Assistant Administrator may change the amount of this fee required at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

* * * * *

(iii) *Observer placement fee.* (A) The owner or managing owner of a vessel for which a DML has been requested must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML was requested. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a vessel for which a DML has not been requested, but that is listed on the Vessel Register, as defined in § 300.21 of this title, must submit payment of the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the observer placement fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement

fee associated with active status less the observer placement fee associated with inactive status that was already paid before NMFS will request the IATTC Secretariat change the status of the vessel from inactive to active.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status before NMFS will request the IATTC Secretariat change the status of the vessel to active.

(F) Payments received after the dates specified in paragraphs (b) (6) (iii)(A) or (B) of this section will be subject to a 10 percent surcharge. The Administrator, Southwest Region, will forward all observer placement fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

* * * * *

(f) * * *

* * * * *

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm>.

(i) * * *

(ii) FCOs and associated certifications, if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned.

Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in either Adobe Portable Document Format (PDF) or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) * * *

(xi) the name of the harvesting vessel;

* * * * *

(xiv) Each additional importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

* * * * *

(12) *Market prohibitions.* (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either:

(A) Dolphin-safe under subpart H of this part; or

(B) Harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by an applicant nation to become a member of the IATTC.

(ii) It is unlawful for any exporter, transshipper, importer, processor, or wholesaler/distributor to possess, sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals unless the label or mark complies with the requirements of 16 U.S.C. 1385(d).

* * * * *

5. In § 216.93, the section heading and paragraphs are amended by revising paragraphs (c)(5)(v), (e) and (f) to read as follows:

§ 216.93 Tracking and verification program.

* * * * *

(c) * * *

(5) * * *

(v) TTFs are confidential documents of the IDCP. Vessel captains and managing offices may not provide copies of TTFs to any representatives of private organizations or non-member states.

* * * * *

(e) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States as required by § 216.24(f)(3)(ii).

(f) *Verification requirements—(1) Record maintenance.* Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCO and required certifications, any report required in paragraphs (a), (b) and (d) of this section, invoices, other import documents, and trip reports.

(2) *Record submission.* Within 30 days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(3) *Audits and spot-checks.* Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951–961 and 971 *et seq.*, unless otherwise noted.

2. In § 300.21 definitions for “South Pacific Tuna Treaty” and “Vessel Register” are added to read as follows:

§ 300.21 Definitions.

* * * * *

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, Subpart D).

* * * * *

Vessel Register means the regional register of vessels authorized to purse seine for tuna in the Convention Area, as established by the Inter-American Tropical Tuna Commission on June 28, 2002.

3. Section 300.22 is amended by revising paragraph (b) to read as follows:

§ 300.22 Yellowfin tuna—Recordkeeping and written reports.

* * * * *

(b) *Vessel register*. Except as provided under paragraph (b)(1) of this section, vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to purse seine for tuna in the Convention Area.

(1) *Exceptions*. The following classes of vessels are exempted from being listed on the Vessel Register to purse seine for tuna in the Convention Area:

(i) Vessels licensed under the South Pacific Tuna Treaty that exercise an option to fish in the Convention Area for a single trip each year, provided that the total number of optional trips does not exceed 32 in a given calendar year. Each optional trip in the Convention Area may not exceed 90 days in duration.

(ii) Vessels of less than 400 st (362.8 mt) carrying capacity for which landings of tuna caught in the Convention Area comprise 50 percent or less of the vessel's total landings, by weight, for a given calendar year.

(2) *Requirements for inclusion on the vessel register*. The Vessel Register shall include, consistent with IATTC actions, only vessels that fished in the Convention Area prior to the creation of the Vessel Register on June 28, 2002. New vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the vessel or vessels being replaced.

(3) *Vessel information*. The owner of any fishing vessel that uses purse seine, longline, drift gillnet, harpoon, or troll fishing gear to harvest tuna in the Convention Area for sale or a person authorized in writing to serve as agent for the owner must provide such information about the vessel and its characteristics as requested by the

Regional Administrator to conform to IATTC actions relative to the Vessel Register. This information initially includes, but is not limited to, vessel name and registration number; a photograph of the vessel with the registration number showing and legible; vessel length, beam and moulded depth; gross tonnage and hold capacity in cubic meters and tonnage; engine horsepower; date and place where built; and type of fishing method or methods used.

(4) *Vessel Register status*. In each calendar year, for a vessel to be categorized as either "active" or "inactive" on the Vessel Register, the vessel owner or managing owner must pay the associated observer placement fee pursuant to § 216.24(b)(6)(iii) of this title, or the vessel will be removed from the Vessel Register by the Regional Administrator for that year.

(i) *Active status*. As early as August 1 of each year, vessel owners or managing owners may submit to the Regional Administrator a vessel permit application and payment of the permit application fee and observer placement fee for each vessel in excess of 400 st (362.8 mt) carrying capacity qualified to be listed on the Vessel Register under paragraph (b)(2) of this section to have a vessel categorized as active for the following calendar year. Vessel permit applications may not be submitted via regular mail; they must be faxed to (562) 980-4027. Owners or managing owners of vessels of 400 st (362.8 mt) carrying capacity or less must only submit payment of the observer placement fee associated with active status in order to request a small purse seine vessel be categorized as active for the following calendar year. The Regional Administrator must receive the faxed vessel permit application and payment of the observer placement fee and permit application processing fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application and payment of the observer placement fee and permit application processing fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A vessel may not be added to active status on the Vessel Register

unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title;

(C) For 2005 only, requests for vessels will be prioritized on a first-come, first-served basis according to the date and time the fax is received in the office of the Regional Administrator;

(D) Requests for active status for 2006 and subsequent years will be prioritized according to the following hierarchy:

(1) Requests received for vessels that were categorized as active in the previous year, beginning with the vessel's status in 2005, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(2) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year, beginning with the vessel's status in 2005;

(3) Requests for vessels not described in paragraphs (b)(4)(D)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated observer placement fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(4) Requests received from owners or managing owners of vessels that were determined, by the Regional Administrator, to have made a frivolous request for active status, under paragraph (b)(4)(ii) of this section.

(ii) Frivolous requests for active status. Beginning with requests made for 2005, a request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of *force majeure* or other extraordinary circumstances as determined by the Regional Administrator, if, for a vessel categorized as active in a given calendar year, less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area.

(iii) *Inactive status*. From August 1 through November 30 of each year, vessel owners or managing owners may request that vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year by submitting to the Regional Administrator payment of the associated observer placement fees. Payment of the observer placement fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive.

(5) *Removal from the Vessel Register*. A vessel may be removed from the

Vessel Register by the Regional Administrator:

(i) If the vessel has sunk;
(ii) Upon written request by the vessel's owner or managing owner;
(iii) If the vessel owner or managing owner does not pay the observer placement fee associated with the vessel's active or inactive status on the Vessel Register for a given calendar year;

(iv) If the vessel owner or managing owner does not submit, within the allotted time, a vessel permit application and permit processing fee;

(v) If the United States Coast Guard notifies NMFS that the U.S. documentation for the vessel has been deleted; or

(vi) For serious violations, for failure to pay a penalty, or for default on a penalty payment agreement.

(6) *Procedures for replacing vessels removed from the Vessel Register.* (i) A vessel previously listed on the Vessel Register, but removed for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the

owner of the vessel pays the observer placement fee associated with inactive status.

(ii) A vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(6)(iv) of this section.

(iii) After a vessel categorized as active is removed from the Vessel Register the Regional Administrator will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) The owner or managing owner of a purse seine vessel of 400 st (362.8 mt)

carrying capacity or less may request a vessel be categorized as active to replace a vessel removed from the Vessel Register by submitting payment of the observer placement fee to the Regional Administrator.

(v) The owner or managing owner of a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity may request a vessel be categorized as active to replace a vessel removed from the Vessel Register by submitting the following items to the Regional Administrator:

(A) Payment of the observer placement fee;

(B) A vessel permit application faxed to (562) 980-4027;

(C) Payment of the permit application processing fee; and

(D) Verification that the captain of the vessel possesses a valid operator permit.

(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

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